IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL JURISDICTION

CRIMINAL CONTEMPT PETITION NO.25 OF 2004
IN
S.C. SUIT NO.4374 OF 1978

Dr.Ramesh D. Pandit & anr. — Petitioners (original Plaintiffs)

vs.

Smt.Janabai wd/o.R.J.Bhandari & ors. — Respondents (original Defendants)

Smt.Varsha Naresh Turakhia — Respondent (original Agent of the Court Receiver,High Court Bombay)

Mr.Satyendrakumar Goyal — Respondent

Mr.Vishal Kasbekar i/b.Mr.J.S.Goge for the petitioners

Mr.S.S.Jani for the respondents 1 to 10.

Ms.Sonal Kothari for the respondent no.11.

Mr.R. D'Souza i/b. Mr.A.S.Rai for the respondent no.12.

Mr.L.C.Joshi for the respondents 13 and 15.

Mr.S.R.Kothari - respondent no.14 in person.

Mrs.P.H.Kantharia, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 27th April 2005

ORAL ORDER (Per R.M.Lodha,J.)

This contempt petition has been filed by the present petitioners after obtaining the consent of the Advocate General.

2. The consent of the Advocate General reads thus:

> "I have perused the synopsis as well as annexures of the proposed criminal contempt petition against Smt.Janabai & others. The allegations made in the petition clearly disclose that the respondents Nos. 1 to 15 may have committed criminal contempt under section 2(c) of the Contempt of Courts Act, 1971. Inspite of the fact that there were various orders operative in respect of the suit plot to the knowledge of the respondents, third party rights have been created and consent decree has been obtained without disclosing proceedings between the petitioners and the defendants. This is nothing but an act of defiance which would result in frustrating the administration of justice. I hereby give my consent under section 15(b) of the Contempt of Courts Act, 1971 to the petitioners to present the petition for criminal contempt."

3. The brief facts may be noticed first.

. Ramchandra Bhandari (since deceased) and now represented by the respondents 1 to 10 (contemnors) entered into an agreement with the present petitioners for sale of 850 sq.yards of the property from final plot no.432, survey no.18/1, 17/6 and 17/7, Borivali. The present petitioners filed a suit for specific performance of the said agreement against the present contemnors 1 to 10 in the Bombay City Civil Court. On 14th March 1996 the said suit no.4374/1978 was decreed in favour of the original petitioners on the following terms:

> "Defendants are under obligation and are hereby ordered to convey the suit property

i.e. land admeasuring 850 sq.yards bearing original plot no.265 and final T.P.S.No.432 situated in survey No.18/1, 17/6, 17/7 in Borivali as described in prayer clause (a) in the plaint. The defendants are therefore, ordered to take all necessary and proper steps to execute a registered deed of conveyance in favour of the plaintiffs pursuant to the suit agreement to sell exh.A. The Court Receiver is directed to hand over possession of the suit land to the plaintiffs and then stand discharged after accounting is over.

In the event it is found that execution of registered conveyance or transfer of the suit property in favour of the plaintiffs or either of them is impossible then, decree as prayed for in the alternative in terms of prayer (b) of the plaintiff shall be executed against the defendants.

Defendants shall pay costs of the suit to the plaintiff and bear their own."

4. The present contemnors 1 to 10 aggrieved by the judgment and decree of the trial Court dated 14th March 1996 preferred First Appeal No.244/1997. In the First Appeal only ground of challenge was that the identity of the property that was ordered to be conveyed in furtherance of the specific performance of the agreement is not established and, therefore, the judgement and decree was liable to be set aside. The learned Single Judge considered the said contention and dismissed the appeal on April 16, 2002 by observing thus:

"7. Apparently, therefore, while decreeing the suit the trial Court itself has taken care to grant alternative relief to the respondents/plaintiffs, in case execution of decree in relation to conveyance of plot is found to be impracticable or not executable."

5. It may be noticed here that by the Deed of Conveyance dated 29th March 1980 the present contemnors 1 to 10 had transferred the property to the present contemnor no.11. The present contemnors 1 to 10 filed a suit being suit no.510/2001 before this Court for declaration that they were the owners of the property and that Deed of Conveyance dated 29th March 1980 entered into between them and the present contemnor no.11 was void. In Suit No.510/2001 the following consent terms were tendered:

1. By consent the Respondent herein is added and impleaded as the party defendant no.2 and the plaintiffs to carry out the amendment impleading the Respondent No.2 as the party defendant no.2 within 3 weeks from the date of the Order.

2. Agreed, declared and confirmed that the alleged deed of conveyance dated 29/3/80 being Exhibit 'b' to the plaint signed and executed between the plaintiffs and the defendant No.1 is hereby declared void ab-initio and not binding upon the parties hereto and has no effect in law.

3. Agreed declared and confirmed that the plaintiffs are the absolute owners of the immovable property being plot of land more particularly described in Exhibit A and in the said conveyance dated 29/3/80 and also described in the schedule hereunder written and the defendant No.1 never had any right title and interest in respect of the said property referred to above.

4. Agreed declared and confirmed that the defendant No.1 has relinquished and surrendered her alleged right if any

whatsoever in respect of the said property described in Exhibit 'A' as per the said conveyance hereto for the consideration mentioned hereinafter and confirm that the defendant No.1 never had any right, title and interest in respect of the said property.

5. Agreed declared and confirmed that the defendant has agreed to receive the sum of Rs.50,00,000/- (Rupees Fifty lacs only) being the consideration against the defendant No.1 giving up her alleged claim under the said conveyance dated 29/3/80 being Exhibit 'B' to the plaint in respect of the said property described in the schedule hereunder written payable by the defendant No.2 to the defendant No.1 in following manner:

a) Rs.5,00,000/- Paid on or before the execution of these consent terms vide pay order No.026272 dated 12/4/2001 drawn in favour of the defendant No.1.

b) Rs.45,00,000/- On or before execution of the Consent terms vide pay Order No.031563 dated 2/4/2004 drawn in favour of New India Co-Bank Ltd. Borivli.

6. Agreed declared and confirmed that the amount mentioned in foregoing clause is agreed upon to be paid by Mr.Satyendrakumar Goyal of M/s.Peerless Constructions the defendant No.2 who has agreed upon to pay the said amount on behalf of the plaintiffs herein with the concurrence of the defendant being the consideration as aforesaid.

7. Agreed declared and confirmed that the plaintiffs are in absolute owners of the suit property described in schedule hereunder written and are in possession thereof and defendant No.1 gives up her claim if any in respect of the said property under the conveyance dated 29/3/80 being Exhibit 'B' to the plaint.

8. Agreed declared and confirmed that the defendant No.1 has not signed and executed any agreed or entered into any transaction whatsoever with any person

or persons detrimental to the interest of the plaintiffs in respect of the said property and the defendant No.1 agrees and undertakes to indemnify the plaintiffs against any action claim demand made by any person or persons on account of any act of omission or commission by the defendant No.1 in respect of the said property.

9. Agreed declared and confirmed that the plaintiffs are absolute owners of the said property described in the schedule hereunder written and defendant No.1 hereby irrevocably constitute appoint and nominate the plaintiffs with power to substitute as their attorney in order to make necessary applications to various government, semi-government, municipal authorities and for perfecting the plaintiff's title in respect of the suit property and deleting the name of the defendant No.1 if entered in any local revenue government and semi government authorities or in any record.

10. The defendant undertakes to take the necessary steps for revocation/withdrawal of the agency agreement signed in B.C.C.C. suit No.4374 of 78 which the defendant signed and executed pursuant to the order dated the said B.C.C.C. Suit No.4374 of 78 and the defendant confirms that the conveyance referred to above was illegal void ab-initio and unlawful and the possession of the suit property always remained with the plaintiff abovenamed and the defendant No.1 gave the possession to the court Receiver High Court Bombay in B.C.C.C. Suit No.4374 of 78 only on papers however the actual possession of the said property always remained with the plaintiffs.

11. The parties hereto confirmed that the plaintiffs have entered into an Agreement for development dated 10/8/2003 and also have executed the Power of Attorney dated 12/8/2003 in favour of Mr.Satyendrakumar Goyal the sole proprietor of M/s.Peerless Constructions the defendant no.2 herein

and now the defendant no.2 is fully seized and possessed of the said property under the said Agreement and the Power of attorney and the plaintiff hereby confirm the same.

12. The defendant No.1 hereby confirms that the suit property described in B.C.C.C. suit no.4374 of 78 is not ascertainable and description is vague and ambiguous and further that it does not tally with the property described in schedule hereunder written.

13. The Defendant no.1 agrees and undertakes to sign and execute all the necessary papers for the purpose of giving proper effect to these Consent terms/decree.

14. No order as to costs.

15. The certified copies of the consent terms and consent decree are expedited.

THE SCHEDULE ABOVE REFERRED TO

. ALL THAT piece and parcel of land bearing O.P.No.268, F.P.No.463-464 of T.P.Scheme Borivli III (Principal)(Final) admeasuring 3860.40 sq.mtrs. bearing O.P. 268 and also area of Additional F.S.I. of 1243.59 sq.mtrs. as per old DC Rule 10 (2) against area going under Road, bounded as follows:

By North F.P.No.457 Maharashtra Housing Board

By East Second Road and F.P.No.465 and 466-A

By West F.P. No.457 MHB Mumbai.

By South R.G.F.P.No.466."

6. In terms of the consent terms, Suit No.510/2001 came

to be disposed of.

7. It appears that before the City Civil Court, the report was submitted by the Court Receiver on 14th August 2002 seeking directions inter-alia:(a) To direct the Arbitrator, Town Planning Scheme to obtain necessary sanction/approval from Government of Maharashtra for effecting necessary variations in respect of the suit property with coordination of various authorities and to effect necessary variations as required to identify the plaintiff's original plot; b) The said Authority, after demarcating the suit plot admeasuring 850 sq.yds. be directed to hand over the possession to the Court Receiver for handing over the same to the plaintiffs. The present contemnor nos. 1 to 10 also took out two Chamber Summons. In Chamber Summons No.1392/2003 it was prayed that the property under the decree was not ascertainable and, therefore, it be declared that the decree for specific performance passed by the City Civil Court on 14th March 1996 was not executable. On 30th April 2004 the Judge, City Civil Court disposed of the Receiver's report as well as the chamber summons taken out by the present contemnor nos. 1 to 10 by the following order:

> "1. Court Receiver's Report dated 14.8.2002 made absolute in terms of prayers (a), (b) and (d). The Court Receiver, High Court, Bombay is directed to follow with the concerned authorities viz. (1) City Survey Department (2) Municipal Corporation (3) Land Revenue Authorities (4) Sub-Registrar and (5) Tahsildar, to get suit plot of land

ascertained admeasuring 850 sq.yards out of Final Plot no.463/464 as expeditiously as possible, within three months from today.

2. On ascertaining the suit plot, the Court Receiver, High Court, Bombay shall get the boundary of the suit plot of land fenced with barbed wire fencing at the costs of the plaintiffs, within one month from the date of ascertainment of the plot. The plaintiffs to deposit a sum of Rs.5,000/- initially towards the costs of fencing and shall pay balance amount to Court Receiver on completion thereof.

3. After construction of barbed wire fencing, the Court Receiver, High Court shall hand over possession of it, to the plaintiffs immediately or latest within 7 days thereafter.

4. The concerned authorities are directed to act as expeditiously as possible, in order to effectively comply with the decree dated 13th/14th March, 1996. They are free to adopt appropriate measures, including amendment in T.P.S. Borivli No.III, scheme by appointing Arbitrator in accordance with the law. It is clarified that pending the technical formalities of amending T.P.S. Borivali No.III, Scheme, the Court Receiver, High Court, Bombay is free to hand over possession of the suit plot of land as directed hereinabove.

5. On compliance with the aforesaid four clauses, the defendants shall execute conveyance within one month from the date of handing over possession to the plaintiffs.

6. In default of clause-5, the Court Receiver, High Court, Bombay shall execute conveyance on behalf of defendants within six months from the date of this order.

7. The defendants Chamber Summons No.1293/04 shall stand disposed of in view of this order. The defendants shall pay Rs.1,000/- as costs quantified, within one week to the plaintiff from date of this order.

8. The defendants advocate applies for leave to take out summons is made returnable

forthwith. The defendants to register the chamber summons within seven days from today and communicate the registration number to the plaintiffs. The said Chamber Summons is made absolute in terms of prayer (a) with further clarification that Court Receiver, High Court, Bombay shall stand discharged, after putting the plaintiffs in possession of suit plot of land admeasuring 850 sq. yards and after executing conveyance in favour of the plaintiffs.

9. In case, if suit plot un-ascertainable, in that event, Court Receiver to submit his report within three months from today before this Court. In that event, decree in terms of prayer (b) shall be executed.

10. Save and except this order, no other order in the Court Receiver's report, dated 14.8.2002, Chamber Summons No.1293/04 and fresh Chamber Summons. All these proceedings shall stand disposed of as aforesaid."

8. The order passed by the Judge, City Civil Court on 30th April 2004 is subject matter of challenge in Writ Petition No.5763/2004. Writ petition has been admitted by the learned Single Judge and an order of status-quo has been granted therein.

9. In the backdrop of the aforesaid facts and the orders passed in various proceedings, the petitioners have prayed that the contemnor nos. 1 to 15 be proceeded for having committed criminal contempt for making false case in Suit No.510/2001 and the consent terms and for having committed breach of various orders passed from time to time.

10. After having heard the learned counsel for the petitioners and the respective Advocates representing the contemnors, we are of the view that a pure and simple civil dispute between the petitioners and contemnor nos. 1 to 10 has been given colour of criminal contempt. The petitioners' case that by filing Suit No.510/2001 by contemnor nos. 1 to 10 against the contemnor no.11 which was collusive in nature and by obtaining decree in terms of consent terms therein, the fraud has been perpetrated on the Court does not merit acceptance. The decree passed by the City Civil Court in the suit for specific performance on 14th March 1996 stands. By filing the suit No.510/2001 by contemnor nos. 1 to 10 against the contemnor no.11, the rights of the petitioners crystalised under the decree dated 14th March 1996 are not at all affected. The petitioners are not bound by the consent decree passed in suit no.510/2001 in which the petitioners are not party nor could the petitioners' right be jeopardised pursuant to the decree dated 14.03.1996. The fact of the matter is that contemnor nos. 1 to 10 have all along been urging that the property which was subject matter of the suit No.4374/1978 and that was decreed by the City Civil Court on 14th March 1996 was not ascertainable. As a matter of fact, even while passing the decree on 14th March 1996 the trial Court observed that in the event it is found that execution of registered conveyance or

transfer of the suit property in favour of the plaintiffs or either of them is impossible, then the decree in the alternative in terms of prayer (b) shall stand passed. In the appeal that was preferred by the contemnor nos. 1 to 10 against the judgement and decree dated 14th March 1996, the only plea that was set up by the contemnor nos. 1 to 10 herein was that the identity of the property ordered to be conveyed in furtherance of the specific performance of the agreement has not been established. The learned Single Judge while dismissing the appeal on 16th April 2002 observed that the trial Court itself has taken care to grant alternative relief in case the execution of decree in relation to conveyance of plot was found to be impracticable or not executable. Not only that the objection about the ascertainability of plot and non-executability of decree dated 14th March 1996 was raised by the contemnor nos. 1 to 10 in the execution proceedings by taking out the chamber summons. Though the said chamber summons have been rejected by the executing Court on 30th April 2004, the said order is under challenge in Writ petition No.5763/2004. The said writ petition has been admitted and order of status-quo is passed. The writ petition shall be heard and disposed of on its own merits. All these facts lead us to infer that there was no interference in the administration of justice or the judicial process by the contemnors and no case for

criminal contempt is made out.

11. The notice of criminal contempt issued to the respondents 1 to 15 is discharged.

12. Criminal contempt petition is dismissed accordingly.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)